

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PETE N. CAMARGO,

Plaintiff,

Case No. 11cv2955 DMS (PCL)

VS.

JESSIE ROTNER, *et al.*,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff Pete N. Camargo, a state prisoner proceeding *pro se*, filed an action pursuant to 42 U.S.C. Section 1983 alleging violation of his constitutional rights. He claims two Brawley Police Department officers used excessive force when they arrested him. The case was referred to United States Magistrate Judge Peter C. Lewis for a report and recommendation in accordance with 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.3.

On June 26, 2012, the motion to dismiss filed by the Brawley Police Department (“Brawley”) was granted. Plaintiff was granted leave to file an amended complaint no later than August 10, 2012 and allege Brawley’s policies and customs which caused the alleged constitutional violation, as required by *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978). (Docket no. 44.) To date, Plaintiff has not filed an amended complaint.

On September 26, 2012, Brawley filed a motion to dismiss the claims asserted against it and enter judgment pursuant to Federal Rule of Civil Procedure 41(b) because Plaintiff did not timely file

1 an amended complaint. The Magistrate Judge issued a Report and Recommendation, recommending
2 to grant Brawley's motion. Plaintiff has not filed any objections.

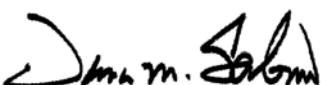
3 A district judge "may accept, reject, or modify the recommended disposition" on a dispositive
4 matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes.
5 Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of
6 those portions of the [report and recommendation] to which objection is made." 28 U.S.C. §
7 636(b)(1). When no objections are filed, the *de novo* review is waived. Section 636(b)(1) does not
8 require review by the district court under a lesser standard. *Thomas v. Arn*, 474 U.S. 140, 149-50
9 (1985). The "statute makes it clear that the district judge must review the magistrate judge's findings
10 and recommendations *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*,
11 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in the original); *see Schmidt v. Johnstone*,
12 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003).

13 In the absence of any objections, the Report and Recommendation is **ADOPTED** as clarified
14 herein. Because Plaintiff failed to state a claim against Brawley and failed timely to file an amended
15 complaint, all claims asserted against Brawley are dismissed with prejudice for the reasons stated in
16 the June 26, 2012 order and the report and recommendation it adopted. The June 26, 2012 order had
17 no effect on the claims asserted against Defendants Jesse Rotner and Torray Scales, and the action
18 shall proceed against them. The dismissal of claims asserted against Brawley therefore does not
19 dispose of the case in its entirety. Brawley's request for entry of judgment is denied as premature
20 pursuant to Federal Rule of Civil Procedure 54(b).

21 For the foregoing reasons, the motion to dismiss filed by the Brawley Police Department is
22 **GRANTED IN PART AND DENIED IN PART**. The motion is **GRANTED** insofar as all claims
23 Plaintiff alleged against the Brawley Police Department are **DISMISSED WITH PREJUDICE**.
24 Brawley's Police Department's request for entry of judgment is **DENIED** as premature.

25 **IT IS SO ORDERED.**

26 DATED: November 9, 2012

27 
28 HON. DANA M. SABRAW
United States District Judge